

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

R. DAVID WOLFE, on Behalf of Himself and All Others Similarly Situated,	)	CASE NO. 1:13-cv-00859
	)	JUDGE SARA LIOI
Plaintiff,	)	<u>DEFENDANT IRVING I. STONE</u>
vs.	)	<u>SUPPORT FOUNDATION'S</u>
MORRY WEISS, <i>et al.</i>,	)	<u>MOTION TO DISMISS</u>
)	
Defendants.)	

Defendant, Irving I. Stone Support Foundation (the “Support Foundation”) moves pursuant to Federal Rules of Procedure 12(b)(6) and 23.1 to dismiss Plaintiff’s amended complaint. The grounds for this motion are set forth in the Memorandum in Support filed contemporaneously with this motion.

OF COUNSEL:

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CERTIFICATE OF SERVICE

I hereby certify that on July 10, 2013, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's system.

/s/Dennis R. Rose

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*One of the Attorneys for Defendant
Irving I. Stone Support Foundation*

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R. DAVID WOLFE, on Behalf of Himself and All Others Similarly Situated,)	CASE NO. 1:13-cv-00859
	)	JUDGE SARA LIOI
Plaintiff,	)	<u>MEMORANDUM IN SUPPORT OF</u>
vs.	)	<u>DEFENDANT IRVING I. STONE</u>
MORRY WEISS, <i>et al.</i>,	)	<u>SUPPORT FOUNDATION'S</u>
	)	<u>MOTION TO DISMISS</u>
Defendants.)	

Defendant, Irving I. Stone Support Foundation (the “Support Foundation”) joins in the motions to dismiss filed by the Independent Director Defendants, American Greetings Corporation and the Weiss Defendants filed on July 8, 2013 and incorporates the arguments made and authorities cited in those motions relating to the dismissal of this case based on abstention and lack of standing as if fully restated herein.

In the fall of 2012, shortly after the announcement that members of the Weiss family had proposed to purchase the shares of American Greetings, several lawsuits were filed in Cuyahoga County Common Pleas Court challenging the proposed purchase.¹ Those cases have been litigated for seven months in front of the Honorable Richard McMonagle. This Court should abstain from exercising jurisdiction over this case in favor of the state court actions under the

¹ See *Carter v. Weiss*, No. CV-12-792421 (Cuyahoga Cty. Ct. C.P. Sept. 27, 2012); *IBEW Local 98 Pension Fund v. Weiss*, No.CV-12-793292 (Cuyahoga Cty. Ct. C.P. Oct. 11, 2012); *Hasset v. Weiss*, No. CV-12-793463(Cuyahoga Cty. Ct. C.P. Oct. 12, 2012); *Coyne v. Am. Greetings Corp.*, No. CV-12-793599(Cuyahoga Cty. Ct. C.P. Oct. 16, 2012); *N.Y. Hotel Trades Council & Hotel Assoc. v. Weiss*, No.CV-12-794541 (Cuyahoga Cty. Ct. C.P. Oct. 29, 2012); *Int'l Union of Operating Eng'rs v. Am.Greetings Corp.*, No. CV-12-794747 (Cuyahoga Cty. Ct. C.P. Nov. 1, 2012).

principles set forth in *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800 (1976) and its progeny.

Plaintiff's claims should also be dismissed because Plaintiff has not alleged that he has been injured in any capacity other than in common with all other shareholders and therefore does not have standing to assert a direct claim. *See Adair v Wozniak*, 492 U.S. 426 (Ohio 1986).

Finally, Plaintiff's claims should be dismissed because Plaintiff has failed to "state with particularity: (A) any effort by plaintiff to obtain the desired action from the directors or comparable authority and, if necessary, from the shareholders or members; and (B) the reasons for not obtaining the action or not making the effort." *See Fed.R.Civ.P. 23.1 (b)(3). See also, In re Ferro Corp. Derivative Litig.*, 511 F.3d 611, 617-23 (6th Cir. 2008); *In re Keithley Instruments, Inc., Derivative Litig.*, 599 F. Supp. 2d 908, 917-20 (N.D. Ohio 2009).

For the foregoing reasons and for the reasons set forth in the memoranda in support of the motions to dismiss filed by the other defendants, Plaintiff's Amended Complaint should be dismissed.

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CERTIFICATE OF COMPLIANCE

The foregoing memorandum in support complies with the page limitations set forth in L.R. 7.1.

/s/Dennis R. Rose

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*One of the Attorneys for Defendant
Irving I. Stone Support Foundation*

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